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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 24th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 15 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

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* The summary record of the second part (closed) of the meeting appears as document E/CN.4/Sub.2/2001/SR.24/Add.1.

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The meeting was called to order at 10.05 a.m.

OTHER HUMAN RIGHTS ISSUES:

(a) WOMEN AND HUMAN RIGHTS

(b) CONTEMPORARY FORMS OF SLAVERY

(c) OTHER ISSUES

(agenda item 6) (continued) (E/CN.4/Sub.2/2001/4, 23, 24 and 26-32; E/CN.4/Sub.2/2001/NGO/23 and 24; E/CN.4/2001/82 and Add.1 and 96)

1. Mrs. DAES said that she welcomed the note by the Secretary-General on smuggling and trafficking in persons and the protection of their human rights (E/CN.4/Sub.2/2001/26). That note underlined the fact that the High Commissioner for Human Rights had identified the trafficking in persons as a priority issue. Statistics showed that there had been a considerable increase in the number of persons migrating across borders without the necessary documentation and concerns had been raised about the ability of States to regulate effective access to their territories.

2. Both economic migrants and political asylum-seekers were being exploited by criminal organizations that profited by offering their illicit services to vulnerable people. The results were often tragic. In many cases, smugglers left their human cargo abandoned in a remote area without food or shelter, at risk of a lonely death from exposure and starvation. Other smugglers simply threw their victims into the sea, leaving the weakest to drown. Such illegal and inhuman acts constituted grave violations of human rights and serious crimes which the Office of the United Nations High Commissioner for Refugees (UNHCR) needed to address as a matter of priority.

3. In order to combat trafficking in persons, some States had adopted the practice of "intercepting" persons travelling without the necessary documentation, prior to their arrival in the country of destination. That practice was highly problematic legally, in that it could prevent legitimate asylum-seekers from benefiting from international protection as refugees. Instead, she urged UNHCR to intensify its efforts to place the responsibility for human rights abuses committed in the context of trafficking on the States in which such abuses were committed. She also urged it to devise more effective ways of preventing illegal smuggling without violating the fundamental human rights of asylum-seekers.

4. She also proposed the addition of the following paragraph to the operative part of the draft resolution on the report of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/2001/L.18): The Sub-Commission "Requests the Commission on Human Rights to authorize the High Commissioner for Human Rights to organize, in cooperation with the Office of the High Commissioner for Refugees, the International Organization for Migration and other intergovernmental organizations concerned, a workshop, in which all aspects of the smuggling and trafficking in persons and the protection of their human rights will be considered; this workshop should take place not later than July 2002."

5. The CHAIRPERSON asked Mrs. Daes to submit her proposed addition to the draft resolution in writing.

6. Ms. MOTOC said that the issue of human rights and scientific and technological developments had been a matter of concern to the United Nations since the 1960s. An important step forward had been taken in 1982 with the adoption by the General Assembly of a set of guiding principles on medical ethics. The United Nations Educational, Scientific and Cultural Organization (UNESCO) had established an International Bioethics Committee in 1983, which considered issues ranging from population genetics to access to medical treatment using biotechnology. As a result of the work of that Committee, UNESCO had adopted in 1997 the Universal Declaration on the Human Genome and Human Rights, which had subsequently been endorsed by the General Assembly of the United Nations.

7. Many of the principles contained in the Universal Declaration were still at the heart of the current debate on bioethics. Research practices that threatened human dignity, such as human cloning, were forbidden. With regard to research intended to further the advancement of medical science, the principle of consent was of fundamental importance. While the question of consent continued to give rise to controversy in legal circles, the Universal Declaration stated that vulnerable groups of people should be protected and that comprehensive information should be made available concerning the possible effects of genetic research. The international community should also consider the racist implications of selectivity in genetic research.

8. It was critical for States to ensure that they retained the means to control the activity of researchers on their territory, for instance by establishing national bioethics committees. She urged the Commission on Human Rights to authorize an in-depth study of the follow-up to the Universal Declaration, taking into account the various human rights issues connected with bioethics. The human rights community needed to act swiftly if it was to keep pace with the scientific and technological developments.

9. Mr. SIK YUEN said that the Chagos Islands had been annexed by the United Kingdom shortly before Mauritius had obtained its independence in 1968. The former inhabitants, the Ilois, had been forcibly displaced to Mauritius in the early 1970s. At the fifty-second session of the Sub-Commission, he had been unable to support a resolution submitted by Ms. Hampson that concerned the situation of the Ilois.

10. Since then, a judgement handed down by the United Kingdom High Court of Justice had exposed the attitudes of the British authorities at the time of the annexation. The strategy had been to detach the Chagos Islands from Mauritius on the eve of its accession to independence in order to hand Diego Garcia over to the United States of America for the establishment of a military base. The High Court had found in favour of Mr. Bancoult, an Ilois, ruling that the British authorities had had no lawful power to remove him from the Chagos.

11. Quoting excerpts from the judgement of Lord Justice Laws, he drew attention to paragraphs 6 to 20. In paragraph 9, it was made clear that the British authorities were well aware of the incompatibility of their actions with a United Nations resolution. In paragraph 11, it was indicated that the United States Government had made it plain that, in the interests of security, it would be unacceptable for its military base to be subject to any degree of control by a newly

emergent State, namely, Mauritius. Paragraph 12 contained comments on the concern of the British authorities to present to the outside world a scenario in which there were no permanent inhabitants of the Archipelago. Paragraph 19 contained further information relating to the efforts of the British Government to ensure that the displacement of the civilian population took place as discreetly as possible. In the light of the High Court judgement, a Bill was hastily submitted to the House of Lords for the purpose of offering British nationality to the Ilois, including the right of residence in Britain.

12. He was unable to accept the new draft resolution on the subject of the right to return of internally displaced persons and refugees (E/CN.4/Sub.2/2001/L.39), initiated by Ms. Hampson, which was a wolf in sheep's clothing. There were a number of specific aspects of the draft resolution that he found unacceptable. The proposed alternative of compensation, should the return of displaced persons prove impossible, suggested that the impossibility of return was almost a foregone conclusion. The repeated reference to the possibility of displaced persons settling elsewhere drew the focus away from the right to return. Finally, there was a shift in emphasis away from return altogether, to references to exchanging property rights over original homes or places of habitual residence for "similar rights over another property" or to "undertake other possible transactions".

13. In view of the fact that displaced persons were already in a vulnerable situation, it would be fallacious to believe that, in the difficult conditions in which they found themselves, they would be able to exercise "free choice" when faced with what appeared to be an easy and short-term solution. The Ilois, for instance, would effectively lose their right to return in exchange for a sum of money or other benefits illusorily described as "compensation".

14. The CHAIRPERSON suggested that Mr. Sik Yuen and Ms. Hampson should engage in consultations concerning the draft resolution on the right of return of internally displaced persons and refugees.

15. Mr. ALFONSO MARTÍNEZ said that he supported the addition proposed by Mrs. Daes on smuggling and trafficking in persons to the draft resolution on the report of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/2001/L.18). In his own region, the Caribbean, traffickers in persons often combined their trade with narcotics smuggling. The workshop proposed by Mrs. Daes would be a useful opportunity to provide a conceptual analysis as well as to search for solutions to what was a growing phenomenon.

16. He welcomed the progress report prepared by the Special Rapporteur on terrorism and human rights (E/CN.4/Sub.2/2001/31). Drawing attention to paragraph 130, he said he fully agreed that terrorism could be successfully reduced only by an attempt to address its root causes. As Ms. Koufa had concluded, violations of human rights, humanitarian law and the principles of the Charter of the United Nations were among the major causal factors of terrorism. Consequently, many terrorists considered themselves to be defenders of human rights. As long as the right to self-determination of peoples was denied in many parts of the world, terrorism would continue to exist. There were two areas in particular that required further study: the question of impunity with regard to State terrorism, and the issues connected with extradition. He did not like the expression "sub-State (or individual) terrorism". The ambiguity of such language should be avoided in future.

17. With regard to the working paper on promotion and consolidation of democracy (E/CN.4/Sub.2/2001/32), he congratulated Mr. Rodríguez-Cuadros on his comprehensive approach. However, he drew attention to the unresolved aspects of the debate that had divided the Commission on Human Rights when it adopted resolution 2000/47 on promoting and consolidating democracy. Given that the working paper had emerged from that controversial discussion, it should be remembered that the conceptual basis therefor had not been entirely resolved. A satisfactory definition of democracy had yet to be established.

18. He recalled that, in several articles of the International Covenant on Civil and Political Rights, the expression "democratic society" was used rather than a specific reference to "democracy". The most crucial question was the extent to which a given society was able to guarantee the participation of minorities in political life. That should be the test of a democratic society.

19. Mr. TANDAR (Observer for Afghanistan) said that a certain foreign Government was seeking to destabilize the legitimate Government of Afghanistan recognized by the international community, using a fanatical militia that it had trained and exported to Afghanistan for the purpose. The militia drew on the services of foreign mercenaries under the command of Osama bin Laden.

20. The creators of the Taliban asserted that their policy, particularly with regard to women and girls, was based on Afghan culture. He vigorously denied that assertion; the fanaticism of the militia was the very obverse of Afghan culture. Women had always participated in Afghan economic, social, cultural and political life. The first secondary school for women, the first women's association and the first feminist newspaper had been founded in 1921 and eight women had been members of the 1928 National Assembly. Successive Afghan constitutions had recognized the equality of women and, in 1967, a woman had been appointed Minister of Health. Prior to the militia's occupation, over 50 per cent of students in certain university faculties and some 50 per cent of civil servants were women.

21. The coalition that had usurped power was a past master in disinformation. It distorted the message of Islam and sought to destroy Afghanistan's history and culture, as attested by its destruction of the country's Buddhist heritage. He shared the view expressed in the Secretary-General's report (E/CN.4/Sub.2/2001/28) that the total restoration of the rights of Afghan women should play a key role in any political settlement of the conflict.

22. In the areas under the control of the Government, girls and women had equal access to education and health care and were employed in the civil service, but only limited resources were available for their advancement. His Government therefore appealed for assistance from all concerned and urged the Sub-Commission to reflect that appeal in its draft resolution on Afghanistan, which he hoped would be adopted unanimously. The situation of girls and women in camps for displaced persons within the country was disastrous. Massive emergency aid was essential. He issued a general invitation to the members of the Sub-Commission to visit the part of the country controlled by the legitimate Government.

23. Repeated resolutions, recommendations and condemnations had been unable to change the Taliban policy of sexual apartheid. The militia's view was that women had been placed in the world solely for reproductive purposes. According to the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Afghanistan, the Taliban and foreign mercenaries had abducted women from minority communities as war booty. For the sake of the women and girls of Afghanistan, he called on the international community, including the Sub-Commission, to exert maximum pressure on the country that commanded the Taliban and ensured their survival.

24. Mr. YOKOTA expressed strong support for Mrs. Daes' statement on smuggling and trafficking in persons. The Sub-Commission should address the issue of trafficking, especially in women and girls, as a matter of priority.

25. Ms. HAMPSON said that, at the Sub-Commission's previous session, she had raised the issue of the unlawful denial of the right of the Ilois to return. The draft resolution on the right to return (E/CN.4/Sub.2/2001/L.39) to be discussed at the current session dealt with the plight of millions of internally displaced persons and refugees throughout the world. In numerical terms, the Ilois were a relatively small group but they also stood to benefit from its provisions. UNHCR had seen the draft text and expressed its approval. The wishes of those who opted for settlement elsewhere should be respected, since return was not compulsory but a right. With regard to the voluntary transfer of property, she referred to the case of displaced persons who had no imminent prospect of living safely in their place of origin but who nonetheless wished to exercise their right to housing.

26. It was, of course, essential to make sure, through independent observers, that the property rights had been voluntarily surrendered. Compensation would be payable only if a person's property had been destroyed and could not be restored. She had conferred the previous day with representatives of the Government of Mauritius who were to submit a proposal for a preambular paragraph to the effect that nothing in the draft resolution affected sovereignty or claims to sovereignty. She trusted that, with the inclusion of such a paragraph, the draft resolution would be acceptable to that Government.

27. Ms. CANABADY (Observer for Mauritius) said that her delegation had approached Ms. Hampson the previous day to discuss the draft resolution but that there had been no firm agreement regarding an amendment. Moreover, even if such an amendment were included, there was no guarantee that the draft resolution would be automatically acceptable. Her delegation was still studying the issue and hoped that its concerns could be appropriately addressed.

28. Mrs. WARZAZI, urging Ms. Hampson and Mr. Sik Yuen to seek mutually acceptable wording, stressed that she would vote against any resolution having political implications.

29. Mr. JOINET commented that he had never come across a resolution, whether thematic or otherwise, that had no political implications.

30. Mr. PINHEIRO said that an expert serving on the Sub-Commission should avoid bringing up issues relating to the country of which he or she was a national. The rule governing the discussion of agenda item 2 should be applied to the entire agenda.

Statements in exercise of the right of reply

31. Mr. YUN Byung-se (Observer for the Republic of Korea), responding to a statement by the observer for Japan at a previous meeting, said that the Japanese Government had approved distorted history textbooks through its screening system, thereby neglecting its duty to ensure that children had access to truthful and sound education. The textbooks also constituted a breach of the joint declaration on the recent history of Japan and the Republic of Korea that the leaders of the two countries had made in 1998. He asked whether the visit by the Prime Minister of Japan to the Yasukuni shrine two days previously, during which he had paid his respects to war criminals, was supposed to have no bearing on Japanese Government policy or its recognition of past actions.

32. With regard to the liability of the Japanese Government for the comfort women system and the Asian Women's Fund, Sub-Commission resolution 1999/16 stated that the rights and obligations of States and individuals with respect to the violations referred to in the resolution could not, as a matter of international law, be extinguished by peace treaty, peace agreement, amnesty or any other means. The Sub-Commission's Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflicts, Ms. MacDougall, had stated that the Asian Women's Fund did not satisfy the responsibility of the Government of Japan to provide official legal compensation to individual women victims of the comfort women tragedy. It was his Government's firm position that the comfort women system operated by the Imperial Japanese Government was a crime against humanity for which the current Japanese Government bore full responsibility.

33. His Government supported the strengthening of exchanges between the two peoples but if Japan proposed academic and cultural exchange projects while rejecting appeals to rectify distorted history textbooks, it would be hard to accept that the proposals were being made in good faith.

34. Mr. KIM Yong Ho (Observer for the Democratic People's Republic of Korea), responding to a statement by the observer for Japan the previous day, said that Japan had committed serious crimes against humanity before and during the Second World War by forcing 200,000 Korean women into sexual slavery, using over 6 million young and middle-aged people as slave labourers and killing a million innocent civilians. Japan had never apologized, paid reparations or even recognized its responsibility but had begun to distort and deny historical facts. Its history of aggression was described as a just cause, war criminals were praised as heroes and its military occupation of Korea was termed a legitimate exercise. The Japanese authorities had recently approved school textbooks that referred to a "holy war" and ignored crimes such as sexual slavery and mass killings. Despite the protests from victim States, a top Japanese official had visited the Yasukuni shrine two days previously to pay tribute to war criminals.

35. Asian countries were enraged by such falsifications and denials of guilt. The Japanese authorities argued that the Government did not share the views of the authors of the textbooks. But such evasion of responsibility could only be described as political fraud. Japan's real purpose was to incite a resurgence of militarism and to renew ambitions of invasion among the young. A younger generation imbued with such ultra-nationalistic views might well be expected

to follow in the path of its predecessors. The dangers were reflected in the increase in acts of discrimination and violence against Korean residents in Japan since the outbreak of the dispute over the distorted history textbooks.

36. His Government strongly urged the Japanese authorities to end the distortion of history and acts of violence against Korean residents, and to admit their responsibility for past crimes.

37. Ms. SIM (Observer for the United States of America) said that the observer for Iraq had consistently sought throughout the session to lay the blame for the suffering of the Iraqi people on everybody except those directly responsible. The Government of Iraq bore full responsibility for their tragic plight owing to its naked aggression against its neighbour 11 years previously and its continued refusal to cooperate with the United Nations mechanisms specifically designed to assist the Iraqi population. Since the Gulf war, the international community had been more concerned to seek ways of aiding the Iraqi people than their own Government.

38. The observer for Iraq had raised the issue of depleted uranium the previous day, calling on the Sub-Commission to undertake a study of the subject. Clearly, any such study would far exceed the Sub-Commission's expertise, scope and mandate. The International Agency for Research on Cancer had looked into the allegations concerning the incidence of leukaemia in southern Iraq and concluded that they could not be scientifically confirmed. Moreover, both the World Health Organization (WHO) and the United Nations Environment Programme (UNEP) had completed studies of the situation in Kosovo earlier in the year which had found no detectable widespread contamination of the ground surface or of water, milk, objects or buildings due to depleted uranium.

39. Mr. RUSTAM (Observer for Indonesia), responding to a statement by the International Association of Democratic Lawyers, said that the Moluccas had always been an integral part of Indonesia and that the people of the Moluccas had pledged allegiance to one homeland, one nation and one language in 1928. The organization's statement was inspired by the separatism instigated by Moluccans living abroad and it had made sweeping baseless allegations against his Government. The Christian and Muslim communities in the Moluccas had lived together peacefully prior to the outbreak of the conflict in 1999, which was driven by political, cultural, ethnic and socio-economic factors that had found an outlet in religious tension.

40. His Government had repeatedly condemned the violence associated with the conflict, which had resulted in deaths and incalculable damage to public property. It had actively promoted religious and communal dialogue with a view to restoring peace. In April 2001, a number of factions had produced a Peace Declaration of Muslims and Christians confirming their desire to coexist peacefully and to foil attempts by provocateurs to stir up sectarian feeling.

41. At the same time, the Government, in cooperation with the National Commission on Human Rights, had continued to investigate and prosecute those responsible for instigating or participating in the violence, including security and military personnel. It had launched humanitarian initiatives and rehabilitation, resettlement and reconciliation programmes, which it fully expected to resolve the Moluccan issue. The new Government had given top priority to the preservation of the territorial integrity of Indonesia and the promotion and protection of human rights.

42. Mr. BENTALL (Observer for the United Kingdom), responding to a statement made by the observer for Iraq the previous day, said he associated himself with the statement by the observer for the United States.

43. His Government was aware of assertions that the use of ammunition based on depleted uranium during the Gulf war was to blame for an increase in ill-health in the Iraqi population, including alleged deformities, cancers and birth defects. There was no credible research data to support those claims. Indeed there was a lack of detailed information about the health situation throughout Iraq. His Government had urged the Iraqi authorities to allow WHO to carry out a proper study. Only then could any particular problems be addressed.

44. With regard to the issue of the British Indian Ocean Territory, his delegation was studying the statements made in the light of its Government's policy and reserved the right to respond to them in writing through the Chairperson.

45. Mr. HUSSAIN (Observer for Iraq), responding to the statements by the observers for the United States and the United Kingdom, pointed out that the Governments concerned had suspended numerous contracts for the delivery of food and medicines to Iraq since 1997. The United Nations Secretary-General had actually appealed for the resumption of deliveries.

46. With regard to depleted uranium, he wondered how they could possibly deny its harmful effects on human beings and the environment when members of the armed forces of the United States had been urged to leave parts of Iraq where depleted uranium had been used. Soldiers from both the United States and the United Kingdom had contracted cancer after serving in the Gulf war. After the Kosovo conflict, a number of Italian soldiers had died of cancer and many members of the armed forces of the United States and the United Kingdom had suffered from other ailments. The European Parliament had adopted a resolution condemning the use of weapons based on depleted uranium. His Government had signed an agreement with WHO on the conduct of a mission of inquiry in Iraq and would continue to request further studies, also by the Sub-Commission, of the impact of the weapons concerned.

The public part of the meeting rose at 11.30 a.m.